

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT PRUNTY,	:	
Plaintiff	:	CIVIL ACTION NO. 3:CV-11-825
	:	
v.	:	
	:	(Judge Nealon)
MICHAEL J. ASTRUE,	:	
Commissioner of Social Security,	:	(Magistrate Judge Smyser)
Defendant	:	

FILED
SCRANTON

OCT 25 2011

MEMORANDUM and ORDER

PER M. E. P.
DEPUTY CLERK

On April 29, 2011, Plaintiff, Robert Prunty, filed a complaint seeking review of the Commissioner of Social Security Administration's ("Commissioner") dismissal of his application for disability insurance benefits and supplemental security income. (Doc. 1). A Report was issued by United States Magistrate Judge J. Andrew Smyser on October 3, 2011 recommending that the be case remanded to the Commissioner. (Doc. 11). Objections to the Report and Recommendation ("R&R") were due on or before October 20, 2011. No objections have been filed and the R&R will be adopted.

When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. Thomas v. Arn, 474 U.S. 140, 152 (1985); 28 U.S.C. § 636(b)(1)(C). Nevertheless, the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987), writ denied 484 U.S. 837 (1987); Garcia v. I.N.S., 733 F. Supp. 1554, 1555 (M.D. Pa. 1990) (Kosik, J.) (stating "the district court need only review the record for plain error or manifest injustice"). In the

absence of objections, review may properly be limited to ascertaining whether there is clear error that not only affects the rights of Plaintiff, but also seriously affects the integrity, fairness, or public reputation of judicial proceedings. Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (Vanaskie, J.).

Upon review of the present appeal, the Magistrate Judge has not erred in recommending that the case be remanded to the Commissioner. (Doc. 11). The Magistrate Judge discussed Plaintiff's arguments, namely, that the ALJ erred in finding that he does not have an impairment or combination of impairments that meet or medically equal the listing of impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1, and that the ALJ erred in finding that he could perform light duty work because he is unable to stay on task and concentrate. (Doc. 9, pgs. 3-14; Doc. 11, pg. 11).

Plaintiff argues that his degenerative disc disease, torn right knee ligament, and obesity meet Listing 1.04. (Doc. 9, pgs. 5-6). The Magistrate Judge stated that the ALJ failed to discuss Plaintiff's back, knee and obesity impairments in combination and failed to address whether they meet or equal the listing requirements, specifically Listings 1.02 and 1.04. (Doc. 11, pg. 16). The Magistrate Judge next determined that the ALJ erred in his credibility analysis. (Doc. 11, pg. 17-20). He stated that the ALJ failed to cite support for his finding that Plaintiff's strength was "normal" on numerous occasions, failed to discuss all of Plaintiff's reports of pain and loss of strength, and failed to state why the residual functional capacity assessments override Plaintiff's complaints of pain. (Doc. 11, pg. 17-20). The Magistrate Judge also noted that the ALJ did not discuss Plaintiff's testimony that he falls asleep during the day. (Doc. 11, pgs. 19-20). The Magistrate Judge ultimately determined that substantial evidence does not support the

ALJ's findings.

Having received no objections, the Report and Recommendation will be adopted. An appropriate order follows.

Date: October 25, 2011

A handwritten signature in black ink, appearing to read "William J. Dealon". The signature is fluid and cursive, with a horizontal line drawn underneath it.

United States District Judge

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT PRUNTY, Plaintiff	:	CIVIL ACTION NO. 3:CV-11-825
	:	
v.	:	
	:	(Judge Nealon)
MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant	:	(Magistrate Judge Smyser)
	:	

ORDER

AND NOW, this 25th day of October, 2011, **IT IS HEREBY ORDERED THAT:**

1. The Magistrate Judge's Report and Recommendation (Doc. 11) is **ADOPTED**.
2. The case is remanded to the Commissioner for further action.
3. The Clerk of Court is directed to **CLOSE** this case.



United States District Judge